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## Disagreement between the Spouses

The spouses may at times differ regarding the consummation of marriage and sometimes regarding the specification of *mahr*, its value, its receipt by the wife or as to whether that which was received was given as a present or as *mahr*. Here we have the following issues:

1. Where the husband and wife differ regarding the consummation, the Hanafi school has two opinions, the more preferable of which is: If the wife claims the occurrence of consummation or seclusion, which the husband refutes. the wife's word shall be accepted and the burden of proof will rest on the husband, because it is she who actually contests the reduction of half her *mahr* (*al-Fiqh* 'ala al-madhahib al-'arbah).

The Malikis say: If the wife visits the husband at his home and then claims consummation while he denies it, her word shall be accepted on oath. If the husband visits her at her place and then she claims consummation while he denies it. his word shall be accepted on oath. And similarly, if they both go to see someone else at his place and she then claims consummation while he denies it, his word shall be accepted.

According to the Shafi'is, m case of dispute regarding consummation, the husband's word shall be accepted (*Maqsad al-nabih*).

The Imamiyyah observe: If the spouses differ regarding consummation and the wife denies its taking place in order to preserve her right to deny him her conjugal society until payment of her *mahr*, agreed to be paid promptly, and he claims consummation in order to establish his claim that her refusal is without legal justification, or if he denies consummation seeking to reduce his liability to half the *mahr* and she claims consummation to have occurred, seeking to establish her right to full *mahr* and maintenance during the *'iddah*, in both these instances the word of the party denying consummation shall be accepted irrespective of whether it is the husband or the wife; and, as said earlier, seclusion has no effect.

This may lead a question to arise in one's mind: how do the Imamiyyah jurists accept in this case the word of the party denying consummation, while, as mentioned earlier, they accept the word of even an

impotent man claiming consummation?

The answer is that the issue here is the act of consummation, which is an occurrence and an event claimed to have happened.

The presumption is that an event claimed to have happened has not occurred, and therefore the burden of proof rests on the party claiming its occurrence. That which was in dispute in the issue regarding impotence is the presence of this defect, which justifies dissolution of marriage. Therefore, the wife's denial of consummation implies that she is claiming the presence of that defect, and thereby becoming the claimant. The husband's statement that consummation has occurred implies that he refutes the claim of the presence of the said defect, thereby challenging the claim.

2. If they differ regarding the fact of stipulation of *mahr*, with one of them claiming that valid *mahr* was stipulated prior to the contract, while the other refutes it, saying that the contract was recited without *mahr* stipulation, the Imamiyyah and the Hanafi schools observe: The burden of proof rests on the party claiming stipulation and the party refuting it shall take an oath. But if the wife claims that the *mahr* has been specified and the husband refutes it, and takes an oath after her failure to prove the stipulation, she shall receive *mahr* al-*mithl* if the marriage has been consummated, on condition that *mahr* al-*mithl* does not exceed the amount she claims as having been specified. Thus, if she claims that the contract was concluded with a *mahr* of ten units while he denies it and the *mahr* al-*mithl* happens to be twenty units, she shall receive only ten, in view of her own admission that she is not entitled to more.

The Shafi'is are of the opinion that both the parties are claimants, i.e. each one of them is a claimant as well as a refuter. Therefore, if one of them furnishes proof while the other fails to do so, the judgement shall be given in favor of the party furnishing proof, and if both furnish proof or both fail to do so, they shall both take oath and *mahr al-mithl* shall be confirmed.

3. If both agree that *mahr* has been specified, but disagree regarding its amount, here the Hanafi and the Hanbali schools are of the opinion that the word of the party claiming an amount equal to the *mahr al-mithl* shall be accepted. Therefore, if she claims the *mahr al-mithl* or something else, her claim shall be accepted. If the husband's claim amounts to the *mahr al-mithl* or more, his word shall be accepted. (*al-Mughni* and *Ibn 'Abidin*).

The Shafi'is state: Both are claimants, and if both are unable to furnish proof, *mahr al-mithl* shall be confirmed after their oath.

According to the Imamiyyah and the Maliki schools, the wife is the claimant and the burden of proof shall rest on her. The husband challenging the claim shall take an oath.

4. Where the spouses disagree regarding the actual payment of *mahr*, with the wife denying that she received it and the husband claiming to have paid it, the Imamiyyah, the Shafi'i and the Hanbali school have observed: The wife's word shall be accepted because she challenges the husband's claim who

shall have to furnish proof. The Hanafi and the Maliki schools observe: The wife's word shall be accepted if the dispute arises before consummation and the husband's word if consummation has occurred.

5. When both admit that she has received something and the wife claims that it was a present, while the husband claims it to have been *mahr*, the Imamiyyah and the Hanafi schools observe: The husband's word shall be accepted because he knows his own intention. Therefore, he shall take an oath and it is for the wife to furnish proof that it was a present (*al–Jawahir* and *Ibn 'Abidin*).

Such is the case when there is no circumstantial evidence such a local custom or a particular circumstance of the husband showing that it was a present, such as when it is something eatable or a gift of dress, or what the Lebanese call *al-'alomah* (mark or token) and the Egyptians *al-shabakah* (net), which is a ring or something similar given as a gift to the fiancée by the fiancé so that she may decline other proposals. Therefore, if the thing is something of this kind, the word of the wife shall be accepted.

If the fiancée changes her mind about the marriage after having accepted the ring but before the contract, she is liable to return the ring on his demanding it, and if the fiancé changes his mind, the custom gives him no right to claim it back. But the rules of the Shariah do not recognize any difference between his or her changing his/her mind and therefore she is liable to return the gift as long as it is with her and she has not sold it or gifted it or changed its form.

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